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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/661,740

09/12/2003

Robert E. Ferrell

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9487

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EXAMINER

ANGELL, JON E

ART UNIT

PAPER NUMBER

1635

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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31 DAYS

03/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/661,740	Applicant(s) FERRELL ET AL	
	Examiner Jon Eric Angell	Art Unit 1635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12,26,37-45 and 47-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 12,26,37-45 and 47-61 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Action is in response to the communication filed on 12/22/2006.

The amendment filed 12/22/2006 is acknowledged and has been entered.

Claims 12, 26, 37-45, 47-61 are currently pending in the application and are addressed herein.

Election/Restrictions

The claims have been amended to include new limitations that were not explicitly present in the previous claims. For instance, claims 47, 48, 49, 53, 54 and 55 now encompass methods which utilize any of a very broad genus of patentably distinct VEGF-C species which were not explicitly present in the previously presented claims. Specifically, the claims now encompass methods which are drawn to administering a VEGF-C gene therapy product wherein the VEGF-C gene therapy product can be: (i) a polynucleotide that encodes SEQ ID NO: 4 (claim 47a), (ii) a polynucleotide that encodes a polypeptide comprising a portion of SEQ ID NO: 4 sufficient to permit the encoded polypeptide to bind wild type hVEGFR-3 and stimulate phosphorylation in cells (claim 47b), (iii) a polynucleotide that encodes an analog of (i) or (ii) wherein the analog has up to 25 amino acids added, deleted or substituted with another amino acid compared to (i) or (ii) and retains the ability to bind and stimulate phosphorylation of wild type hVEGFR-3 (claims 47c), (iv) a polynucleotide that will hybridize to a nucleic acid that is complementary to SEQ ID NO: 3 under the exemplary stringent hybridization conditions indicated in claim 48 wherein the nucleotide sequence encodes a polypeptide that binds VEGFR-3 and stimulates phosphorylation of wild type human VEGFR-3 (claim 48), (v) a polynucleotide that encodes a

VEGF- ΔC_{156} polypeptide (claim 49), (vi) a polynucleotide that encodes a polypeptide that comprises at least amino acids 131-211 of SEQ ID NO: 4 and that binds wild type human VEGFR-3 and stimulates VEGFR-3 phosphorylation (claims 53 and 54), and (vii) a polynucleotide that encodes a continuous portion of SEQ ID NO: 4 that has, as its amino terminus, an amino acid selected from the group consisting of positions 30-131 of SEQ ID NO: 4, and as its carboxyl terminus, an amino acid selected from the group consisting of positions 211-419 of SEQ ID NO: 4, wherein the polypeptide binds wild type human VEGFR-3 and stimulates VEGFR-3 phosphorylation (claim 55).

The VEGF-C species encompassed by the claims are independent or distinct because they have different chemical structures and each structure requires a separate search.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. To be clear, Applicants are required to elect a specific VEGF-C gene therapy product encompassed by the claims. Currently, claims 12, 26, 37-45, 47-61 generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

This application also now contains claims that encompass methods which utilize any of the following patentably distinct species of vectors: a replication deficient retroviral vector, lentivirus vectors, adeno-associated viral vectors, and adenoviral vectors (see claims 59 and 60).

The species of vectors are independent or distinct because each is a different type of viral vector derived from a different virus. Accordingly each of the vectors is structurally and functionally distinct and a different search is required for each vector.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, 12, 26, 37-45, 47-61 generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and

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specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103 (a) of the other invention.

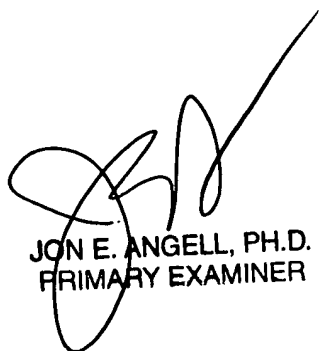
Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon Eric Angell whose telephone number is 571-272-0756. The examiner can normally be reached on 9:00 a.m.- 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Douglas Schultz can be reached on 571-272-0763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

J. E. Angell
AU 1635



JON E. ANGELL, PH.D.
PRIMARY EXAMINER